

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

THE UNITED STATES OF AMERICA, )  
Complainant, )  
vs. ) Case No.: CR-08-310 (FAB)  
4 WILFREDO ROSARIO-CAMACHO, )  
Defendant. )

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TRANSCRIPT OF PROCEEDINGS  
HEARING ON MOTION  
HELD BEFORE JUDGE FRANCISCO A. BESOSA  
ON JULY 19, 2010

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A P P E A R A N C E S

For the United States:

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(No exhibits marked during this session.)

1           The above-styled cause came on for hearing on the  
2 19th day of July, 2010, at 10:05 a.m., before Judge Francisco  
3 A. Besosa, Judge in the United States District Court for the  
4 District of Puerto Rico, when the following proceedings were  
5 had and entered of record, to wit:

6                           PROCEEDINGS

7                           HEARING ON MOTION

8           THE COURT: Mr. Dolz, are you ready?

9           MR. DOLZ-SANCHEZ: Yes.

10           THE COURTROOM DEPUTY CLERK: Criminal 08-310,  
11 Defendant Number 4, Wilfredo Rosario-Camacho, for Hearing on  
12 Motion. On behalf of the Government, Assistant U.S. Attorney  
13 Mr. Marquest Meeks; on behalf of Defendant, Attorney Francisco  
14 Dolz-Sanchez. Defendant is present and assisted by the Court  
15 Interpreter.

16           MR. MEEKS: Good morning, your Honor. Assistant  
17 United States Attorney Marquest Meeks on behalf of the  
18 Government. The United States is ready to proceed.

19           THE COURT: All right. I called this hearing because  
20 Mr. Rosario filed a motion on his own in which he indicates  
21 that he wants to -- he no longer wants to have Mr. Dolz as his  
22 attorney. And he indicates --

23           I'm trying to translate here from the Spanish.

24           -- that Mr. Dolz has never had the interest or the  
25 legal obligation [sic] to represent me, he's not giving -- he

1 has -- he has not given me any type of information or documents  
2 in relation to this case, he understands it's a bit late, but  
3 there are still some legal matters that are -- that are pending  
4 before the Court, and that he would like the Court to assign  
5 him another attorney to be able to have for the first time a  
6 competent legal representative and to be able to file certain  
7 documents and motions as should be done in this case. He also  
8 indicates that he wants to inform that the date that the  
9 probation officer interviewed him, Ms. Katherine Valentin, he  
10 did not -- he waived the right that Mr. Dolz would be present  
11 at the interview, because I was not in agreement with his  
12 attitude or legal representation in my case.

13 All right. Mr. Rosario, please come forward.

14 I would like to know, Mr. Rosario, with detail what  
15 are the -- what is the information and documents in relation to  
16 this case that Mr. Dolz has not given to you?

17 THE DEFENDANT: From the beginning since before the  
18 trial? Or. . .

19 THE COURT: Well, I --

20 THE DEFENDANT: Throughout the trial?

21 THE COURT: Well, I'm not sure what you mean here.  
22 That's why I'm asking.

23 THE DEFENDANT: Okay. From the beginning, I attempted  
24 to have the attorney, Mr. Dolz, discuss the case with me, I  
25 explained to him what had happened, why -- the reason for the

1 accusations. I explained to him the persecution there had  
2 been, the events that occurred, the policemen that had  
3 intervened with me before, and that the majority of those  
4 agents, before the investigation began, they, themselves, had  
5 criminal cases, such as murders, murder of a minor, murder of a  
6 policeman, aggression towards policemen, negligence, disregard  
7 of their duties and other -- many cases. I explained to him  
8 that I had met with an attorney before the charges were  
9 brought, and I had even entered a complaint before the -- the  
10 Department of Justice of Puerto Rico against the police,  
11 because they were persecuting me. And when we came to the  
12 bond hearing, Ms. Castellon, the U.S. Attorney, she used  
13 Agent Cruz, and it was said that I had been fired from the  
14 police, that I -- that I had been arrested with three weapons  
15 from a disco tech when I was a policeman still. That in other  
16 arrests, the cases didn't move forward because witnesses did  
17 not show up. And my family brought the letter of resignation  
18 in that bond hearing, so it was proven by us; so, therefore, it  
19 was proved that I resigned; that I was never fired from the  
20 police. And that I also let it be known that it was a lie that  
21 I had never been arrested with three illegal weapons as a  
22 policemen, that the agent was lying, and that in the other  
23 weapons' case, the agent did show up in the preliminary  
24 hearing. The judge had the hearing, and he understood that  
25 there was no probable cause. But witnesses did appear, and I

1 let him know of that, the bond hearing; but he told me that it  
2 wasn't important right then and there, to leave that aside.  
3 Then, the sworn statements of those agents were given to him,  
4 the documents were given to him, the Complaint, everything, to  
5 prove that there -- they lied in the bond hearing, totally.  
6 In order to -- for me to have bond denied.

7 Excuse me.

8 THE COURT: Why was bond denied?

9 THE DEFENDANT: From what I could read on the docket,  
10 the judge -- the judge denied it because I was supposedly  
11 arrested before because of weapons. Weapons in plurals, just  
12 like the agent of the Strike Force wanted to indicate. And the  
13 weapon that was seized from that day was my own -- my own  
14 weapon -- duty weapon.

15 THE COURT: Was the weapon seized from you when you  
16 were arrested --

17 Was a weapon seized from you when you were arrested in  
18 this case?

19 THE DEFENDANT: No. No, that was in the year 2003,  
20 2004, the first weapons arrest. When I was a policeman.

21 I explained to the attorney that one of the agents  
22 that had testified was Agent Colon, and he had been fired for a  
23 case. I think he's currently still a policeman. I think that  
24 in Monte Parena Housing Project (phonetic) he killed a minor,  
25 and he has a case. And the other one, Agent Felix was also

1 accused of killing another policeman in La Perla Ward. The  
2 supervisor was Mickey Flores. At that time, he was a sergeant.  
3 And he's currently serving a federal sentence because of drug  
4 trafficking.

5 THE COURT: Well, let me ask you this, did Mr. Dolz  
6 show you the evidence that the Government was going to use in  
7 this case against you?

8 THE DEFENDANT: He told me that the only evidence that  
9 the U.S. Attorney had was the witness testimony -- witnesses'  
10 testimony. That there -- there was no other evidence, and  
11 nothing had to be -- that we didn't have to present anything.  
12 I let him know of some audiotapes at one point; and in the  
13 beginning, the U.S. Attorney, she said that they were not  
14 important because they were just mere conversations between  
15 policemen.

16 THE COURT: But did you get to hear those?

17 THE DEFENDANT: Yes. And I let the attorney know so  
18 that he could present a motion to ask for the transcript of  
19 those. Because it was more or less proof of everything I was  
20 telling the attorney. In the majority of those audios, the  
21 person is speaking about me, and they -- they identify me at  
22 all times as an owner -- as an owner of a drug point on October  
23 17th. According to witness -- According to the trial record,  
24 they only had one witness, who could say nothing. She couldn't  
25 even tell if the person she was talking about had anything to

1 do with the conspiracy or not.

2 THE COURT: Well, if I recall -- If I recall, during  
3 the trial, several of the witnesses mentioned you: Jesus  
4 Robles, Freddy, Jessica -- I forget if Xiomara Rosado mentioned  
5 you.

6 THE DEFENDANT: They all mentioned my name. Well,  
7 for -- By October 17th, apparently there was only one witness,  
8 Frances Alvarez.

9 THE COURT: That you knew of?

10 THE DEFENDANT: From what I investigated, yes.

11 THE COURT: The thing is -- The thing is that the  
12 other -- the other witnesses were cooperating witnesses and  
13 were Defendants in the case, and the Government may want -- may  
14 have wanted to not to indicate who those witnesses are for  
15 their safety. And I think -- I don't know if Mr. Dolz  
16 explained this to you, but I think that's a matter that the  
17 Government can -- can do, and I believe I ordered the  
18 Government to provide the names of the witnesses even from  
19 before they had to do it.

20 THE DEFENDANT: No, the U.S. Attorney, she retained  
21 all the names until three days before the trial was to begin.

22 THE COURT: That was my Order.

23 THE DEFENDANT: I have no problem with the amount of  
24 witnesses, eight or ten. I had told Mr. Dolz that this was  
25 something that was personal, that I had already interviewed



1 with a federal attorney before. I gave him the list of persons  
2 he could interview, because what they would do each time, they  
3 would approach a business -- each time they wanted to speak to  
4 someone, and they -- they would first begin by telling the  
5 person that the owner of the drug point in Altos de Cuba was  
6 Tito.

7 THE COURT: Who would say that first?

8 THE DEFENDANT: The police.

9 That's why I went over and had an interview with an  
10 Attorney. And it was proven during trial, during Jesus Robles'  
11 testimony, the first time he mentioned it, I kind of moved  
12 forward and told the attorney; I was trying to let him know  
13 that what I was saying was the truth. And I believe that  
14 Attorney Garay or one of the lady attorneys presented an  
15 objection, because it was something that didn't -- didn't  
16 -- (Spanish) --

17 THE INTERPRETER: Can I clarify, your Honor?

18 (The Defendant begins again in Spanish.)

19 THE DEFENDANT: That it was something that -- that  
20 wasn't of the witness' knowledge, and that it was taken off the  
21 record; but, then, when Attorney Garay Crosses the witness, the  
22 first and only witness that they got said that the police had  
23 arrested him, and that he was telling them the name of the  
24 owner -- of the point owner. So this was very clear in that  
25 testimony, and I'm trying to explain the whole time to

1 Attorney Dolz why they are accusing me. And I told him -- I  
2 told him that there were some audiotapes of the agents and in  
3 it they say that their idea is to have Tito go up the hill, up  
4 the slope towards the point, and that's their idea.

5 THE COURT: Well, they may have had information -- You  
6 know, the police may have had information of your role in the  
7 drug trafficking organization, and what they were trying to do  
8 was get you on the video.

9 THE DEFENDANT: Well, they say it, that they want  
10 me to go up, because their idea is to have me talk to these  
11 people, going by, me being by them, so that I look as an  
12 -- that I look like an accomplice. Those are their words.

13 THE COURT: Well, precisely. They may have had  
14 information that you were involved in this organization, and  
15 they're saying, Well, let's -- we have to get Tito on this  
16 video. I mean, it seems to me that's, you know, the police  
17 wanting to get you on the video to get, maybe, perhaps, better  
18 evidence of your participation in the organization, if that's  
19 -- if that's what they wanted. But what does that have to do  
20 with Mr. Dolz?

21 THE DEFENDANT: I was asking him the whole time to get  
22 transcripts, because part by part, I can prove what they wanted  
23 to do with me.

24 THE COURT: Well, what do you say that they wanted to  
25 do?

1 THE DEFENDANT: They were trying to get me in jail for  
2 over six years. I had three arrests in pubs. I was inside  
3 these places. It's not that I was outside, and they went by.

4 THE COURT: Well, isn't that true for all the  
5 Defendants here, Mr. Rosario? That -- I mean, this  
6 investigation took a long time, seems to me.

7 THE DEFENDANT: How long, 17 months around --

8 THE COURT: The conspiracy was --

9 THE DEFENDANT: That long?

10 THE COURT: The conspiracy was charged from 1999. I  
11 believe that the investigation began sometime in 2004, 2005,  
12 2006, and -- and --

13 THE DEFENDANT: Well, in the bond hearing, the Strike  
14 Force Agent said it had been March, 2007.

15 THE COURT: When the investigation started?

16 THE DEFENDANT: Yes. There's another point that I  
17 discussed with Attorney Dolz, and he didn't want to ask anyone  
18 about it. And even more so, when the first witness came over  
19 to testify, Frances Alvarez, I become aware that she's  
20 confusing me with someone else, and I tried to send him a note  
21 to let him know that if his turn came up, not to start the  
22 questioning so I could explain to him who this lady is  
23 confusing me with and because there was a 2002 police report  
24 that could specify and explain the person that she was  
25 testifying about. But notwithstanding that, he didn't want to

1 do anything. He didn't want to investigate.

2 I started trial, and he had not been to see me --

3 THE COURT: From the --

4 THE DEFENDANT: -- when the trial had started.

5 THE COURT: From the day you were arrested until the  
6 date that the trial started, he never went to see you?

7 THE DEFENDANT: Yes. He went in September for the  
8 bond hearing, and in December for the second -- of the bond  
9 hearing, and either in February or March, one of those, to let  
10 me know -- of 2008 to let me know that bond had been denied to  
11 me -- I'm sorry, 2009. And I believe -- I believe there was a  
12 status conference in December, or in April, he stood in a  
13 corner and never even came up to me. And last minute, I asked  
14 him a question, and he didn't know anything -- I didn't know  
15 anything.

16 THE COURT: So what you are saying is that he never  
17 visited you in the prison to discuss the evidence?

18 THE DEFENDANT: Yes. On those dates that I stated.  
19 And he returned on November, 2009, to see if I wanted to accept  
20 an agreement, a cooperation agreement or -- an agreement  
21 presented to us by the U.S. Attorney. And then when the  
22 witnesses were presented, it was one of my family members that  
23 gave me the news and -- gave me news of who was going to sit  
24 and testify. Trial started on the 19th, the jury was selected  
25 and everything, and he had not been over. Nothing. And there

1 was so much to be looked at, because, honestly, only two types  
2 come to trial here, the mad men and the truly innocent. And I  
3 am not crazy.

4 THE COURT: Well, I get the drift of what you are  
5 saying. I would like to hear from Mr. Dolz.

6 THE DEFENDANT: Just one last thing that's important.

7 THE COURT: Go ahead.

8 THE DEFENDANT: The U.S. Attorney, Olga Castellon, she  
9 brought in Alfredo Sierra to testify, and Alfredo Sierra did  
10 testify that he was present on February 15th -- The day the  
11 alleged meeting occurred. -- in that area there, when I  
12 arrived at Susana's house. When the U.S. Attorney was asking  
13 questions, he said that he heard me speak. And that I  
14 supposedly said, That I was ready; that I was armed. And that  
15 the attorney asked him, What did he mean by that? And he said  
16 that I was just referring to the fact that I was armed. And it  
17 was asked, What happened there? And he said that Tito -- I  
18 don't know if you remember. -- that he said that we were  
19 waiting for Pepon to come -- to come up in a gray car. And  
20 then Tito -- Correction. -- then Alfredo Sierra says that  
21 Tito, Omar, Carlitos, and Alfonso went up to have that meeting  
22 with Pepon. And that fires were -- fire shots were heard, and  
23 that Omar, Nuni, came down. And then when Omar is about to go  
24 into the house again, the Prosecutor, she pauses the tape, and  
25 she asks, Where was -- Where's Tito? And Tito -- and he says

1 that Tito is up there arguing with Pepon, and he can see that.

2 And if something is clear from the video, it is that  
3 when I got to that house, Alfredo Sierra was nowhere around  
4 that house. And when Omar -- and when the people, he says, go  
5 by his side, when they go up there, when Omar, Carlitos, and  
6 Alfonso go up there to talk to Pepon, I had never left the  
7 house. And she allowed the witness to continue on lying. And  
8 it's very clear in the video.

9 And if something was clear --

10 And the Prosecutor, she knew that I did not go up  
11 there and I did not participate with those people.

12 -- one, the video is very clear and you can see that;  
13 and, secondly, Prosecutors, Massucco and Castellon, before the  
14 Grand Jury, they asked a witness, they asked, Why didn't Tito  
15 participate in that meeting? But then in -- during the trial,  
16 they presented it as if I was in the meeting and I had  
17 participated in the meeting with all those people there. And  
18 the Prosecutor knew the whole time that I did not participate  
19 in that. And all the persons came -- aside from me, and she  
20 stopped video -- And you can see it. Policemen arrived in  
21 civilian clothing. And they were there in front of Susana's  
22 house more than the three minutes that I was in -- in front of  
23 Susana's house talking to the same people. And all that I  
24 explained to him, I say, Look, they're lying. You have the  
25 evidence. And he would just say, the whole time, I'm not going

1 to ask about that; I'm not going to ask.

2 And that -- that was -- that which was related to  
3 Frances and the business, all that, I told him, Bring the  
4 evidence. And he said he was not going to ask about that. And  
5 as far as Jessica's testimony, I also told him that there was  
6 evidence that she was lying, and he also said that he was not  
7 going to ask about that. He didn't want to ask questions of  
8 any of the witnesses.

9 I wanted to sit and testify, and he didn't allow me  
10 to do so. Well, what could I do if I wasn't going to be asked  
11 questions?

12 There was a policeman that said that he could identify  
13 me, and a video was shown, and only three seconds were shown --  
14 five or ten seconds for him to -- for him to identify me, and  
15 the policeman said he didn't know about me, but that he could  
16 identify me because of my physical description. But,  
17 notwithstanding that, the audiotapes -- in the audiotapes, you  
18 can hear that they're talking about me the whole time. And you  
19 can hear him say, Is that him, the one you were telling me was  
20 the owner? Is that him? I tell him to ask about that, and he  
21 didn't want to ask.

22 Agent Mera sat here to testify. He said he arrested  
23 Jannette Hernandez, a girl that died in MDC. He said that he  
24 was with Agent Slesar and they -- they saw her with drugs and  
25 they arrested her and they took her -- they took her away, but

1 they didn't file any documents, and he was the witness that you  
2 -- that you asked the documents from. Some documents that he  
3 was using in his testimony; you asked for them. You became  
4 upset, and you took them from him; and if they had not been  
5 important, you wouldn't have asked for them -- you wouldn't  
6 have taken the documents from him.

7           And when they brought the drugs, they identified it in  
8 the exhibits -- I think it was marijuana and crack. -- and  
9 Agent Carlos Rosario later testified that he was the one who  
10 had stopped in the alley -- that had stopped Jannette. He  
11 -- he was on foot in the alley, and he saw that Jannette -- He  
12 saw the girl hiding the drugs. But -- and then he also  
13 identifies the same exhibit. And I tell him all that, but he  
14 didn't want to Cross either Mera or Rosario.

15           And Frances Alvarez testifies, Alfredo Sierra  
16 testifies, everyone identifies me as Tito. Julio Gonzalez,  
17 Strike Force Agent, comes in, and then he calls me Tito Kilo.  
18 And then after that agent testified, then every other witness  
19 started calling me Tito Kilo once they -- when they were  
20 identifying me.

21           THE COURT: Well, let me hear from Mr. Dolz. Thank  
22 you, Mr. Rosario.

23           MR. DOLZ-SANCHEZ: Let me start with the -- with the  
24 reservation that should be mentioned before this Court.

25           At the outset, when I was appointed to represent this



1 Defendant, when I went to see him in MDC, the first thing that  
2 he asked of me was that he wanted to see -- speak with Attorney  
3 Gil Guillermo. It took me two weeks to put that meeting  
4 together. Because I thought that he was in the process of  
5 maybe trying to reach some kind of agreement with the  
6 Government. He was brought over, Ms. Castellon was there,  
7 Mario Torres was there, and Mr. Gil was there, and I allowed  
8 them to speak for half an hour, 45 minutes, and I was just  
9 outside the room. I didn't want to get involved in those  
10 conversations. At the end of the 45 minutes, Mr. Gil comes  
11 back to me and tells me there's nothing we can do. We have not  
12 reached an agreement. We don't have an agreement. From there  
13 on, the instructions were not -- not to pros- -- not to seek  
14 any agreement with the Government. Which I tried to do.

15 Bail matter comes --

16 THE COURT: You mean instructions from the --

17 MR. DOLZ-SANCHEZ: From the Defendant himself.

18 THE COURT: Okay.

19 MR. DOLZ-SANCHEZ: He didn't want to allow me -- he  
20 wouldn't allow me to even meet with Ms. Castellon or Mr. Torres  
21 or Mr. Gil, so that's how we started.

22 The issue on the bail, the initial hearing was heard,  
23 he was held -- temporarily held, I filed for a reopening, and  
24 that was a full-blown hearing. So by that time I have already  
25 memorized the videos and the contents of the videos that were

1 -- that relate to him. So during that hearing, those videos  
2 were -- we knew the contents, we knew there were comments in  
3 Spanish. As your Honor recalls, there were issues with those  
4 comments because the Government elected to present the videos  
5 without the audio, with reason, because, in my estimation, I  
6 told him, Those videos might contain -- Those audios might  
7 contain some information -- some information that could be  
8 helpful to you. But most of it is damaging. And he knew that  
9 because he had access to the videos at MDC, and each and every  
10 time I went to see him, I made sure that he was reviewing those  
11 tapes at the same time that I was reviewing the tapes.

12 We did get an investigator. I decided that I would  
13 not tax the Court's resources, so I asked the family to pay for  
14 the investigator. Who was Mr. Luis Ortiz, who used to be a  
15 police officer with him. And Mr. Ortiz did his job, he brought  
16 all the information that was requested, including the records  
17 of arrests of this particular Defendant. Three or four  
18 arrests. Your Honor heard that evidence. Not one of those  
19 arrests -- either because I negotiated the situation with  
20 Ms. Castellon or there were motions filed with the Court, which  
21 the Court eventually granted, that's the reason why neither of  
22 those arrests were mentioned during the case.

23 There was also the issue that he wanted me to allow  
24 the jury to know that he was a police officer. Your Honor is  
25 knows -- knows that there were motions filed, there were

1 agreements reached with the prosecution, and that was not  
2 mentioned at all through all the trial. When I went to  
3 interview him the number of times that I met him --

4 I don't recall exactly how many it was.

5 -- the conversations were around, "This is a  
6 fabrication," "I didn't do any of this," "It's something that  
7 the police made up," and we kept on doing our -- our own  
8 investigation, our own research; eventually, we came to trial.

9 Again, the issue of the audios; it was before the  
10 Court. The defense wanted to play the audios; the Government  
11 didn't want to play the audios. That's their prerogative. But  
12 it was up to us, within our case, to then present the audios.  
13 Again, it was my estimation -- my professional estimation that  
14 those statements would hurt him more if they came in. So it  
15 was a matter of strategy.

16 He mentions something about Frances Alvarez. Frances  
17 Alvarez was the widow of Rolando Sostre. On that examination  
18 of what she said was that this Defendant was the one who was  
19 supplying cocaine to Rolando for him to make crack, and they  
20 would meet three, four, five times a week. At least three  
21 times a week, I recall. My only Cross was directed at  
22 narrowing down the times when they would meet. Because, as the  
23 Court recalls, it was something like car-to-car, and nobody  
24 would get down, but -- but Frances was able to -- was able to  
25 recognize him because of the number of times that this

1 happened.

2 Now, these witnesses were impeached to the most -- Of  
3 course, we had to wait until the Government provided the list  
4 of the names; and myself, Ms. Ramos, Ms. Tirado, spent weeks  
5 and at least two weekends gathering that information in order  
6 for the proper impeachment to be made. All throughout he was  
7 -- the Defendant kept on telling me: "I have nothing to do  
8 with this witness"; "I don't know this witness." First thing I  
9 asked, they recognize him, and they even make specific  
10 reference to dates, to situations wherein he pointed a gun at  
11 one of the sellers, different situations that were just coming  
12 out, and that's the way it went. Not one police officer -- not  
13 one police officer. And he was claiming that it was  
14 fabrication. Only one or two police officers came to identify  
15 him in the video. But none of the police officers who  
16 testified provided an incriminated or damaging information  
17 about his participation. It was the Co-Defendants. It was the  
18 Co-Defendants; the persons he was doing business with that  
19 explained to the jury what was his role. So we had to handle  
20 it the way it came, because the Government was not obliged to  
21 provide us with that information before trial.

22 In general terms, your Honor -- there's a matter  
23 of -- it has been a -- a like a seesaw, bad communication,  
24 instances when I -- In my estimation, was trying to bully me.  
25 I had -- he did provide a number of questions that I had to

1 sort out with the rest of the lawyers, because most answers  
2 were damaging to everyone. And I think we -- we controlled  
3 that to the best that we could.

4 Your Honor, as things stand now; that is, that the  
5 Presentence Report has been prepared, and I agree with him in  
6 the sense that I do not feel comfortable; plus, an issue that  
7 transpired on the day of the verdict where this Defendant at  
8 the cellblock posed a number of threats against me. And five  
9 or six of the deputies came to me to warn because -- because of  
10 several comments he made. I kept quiet until today. So, in my  
11 estimation, he's correct; I shouldn't represent him anymore.

12 THE COURT: Well, the only thing -- the only thing  
13 that we have left is the sentencing.

14 MR. DOLZ-SANCHEZ: Correct, your Honor. But since the  
15 Presentence Report is a 50-page document, I brought him a copy.  
16 I want the CSO to tender it to him. This is a copy of the  
17 Presentence Investigation Report.

18 THE COURT: That looks like the Indictment.

19 MR. DOLZ-SANCHEZ: Wait. It is the Indictment.

20 THE COURT: Is that the Presentence Report?

21 MR. DOLZ-SANCHEZ: That's correct, your Honor. That's  
22 the full Presentence Report.

23 (Document is handed to the Defendant.)

24 MR. DOLZ-SANCHEZ: We have been calling each other and  
25 at least discussing over the phone, motions that he wants to

1 file or motions that he thinks should be filed at this stage.  
2 I told him this is not the proper time. We have the sentence  
3 pending, we have to work --

4 THE COURT: Well, there's a Motion for Acquittal  
5 pending. Or for New Trial.

6 MR. DOLZ-SANCHEZ: Thanks, your Honor. All the  
7 motions that had to be filed in this case, were filed. Were  
8 timely filed: Motion for Acquittal, Motion for New Trial, so  
9 everything is --

10 THE COURT: There were several evidentiary matters  
11 that were briefed also.

12 MR. DOLZ-SANCHEZ: That is correct, your Honor. So  
13 I think we did the best that we could with the circumstances.  
14 I -- I heard the Defendant; I never heard him once say -- say  
15 that he was innocent. There's no protestation of innocence.  
16 He says that only mad people and -- and innocent people come to  
17 trial before this Court. That is not correct, and your Honor  
18 knows that. He elected to go to trial, he dragged the other  
19 Defendants into trial, there was a consequence for not  
20 cooperating with his lawyer --

21 THE COURT: What do you mean -- What do you mean he  
22 dragged all the others in?

23 MR. DOLZ-SANCHEZ: Well, people had pleas in this  
24 case, and he had offers. And at the very end, at least three  
25 Defendants that had pleas for 12, 14 years, just elected to

1 follow into what we knew was going to be a guilty verdict, and  
2 a life sentence because of the amounts of drugs involved. We  
3 knew that, and we told him that. I told him that a number of  
4 times. And now he comes with this thing about that: I didn't  
5 do what -- I did what I had to do. And most of what he says is  
6 trial strategy discussed with him, discussed with the other  
7 lawyers, discussed with the other persons, he was not alone in  
8 the case, and things were discussed at length in the afternoons  
9 and in the evenings, and we came up with motions, and the Court  
10 is aware of those, so we -- I think, in my estimation, that I  
11 did the best that I could with the circumstances.

12 And, obviously, the Court -- I mean, the jury  
13 could have elected not to believe the Co-Defendants, the  
14 Co-Conspirators, but the jury elected to believe them, because  
15 all the Defendants were found guilty.

16 Thank you, your Honor.

17 THE COURT: Mr. Meeks, do you have a dog in this  
18 fight?

19 MR. MEEKS: Not towards one side or the other in  
20 particular, your Honor. However, the Government would like to  
21 note for its position that of course under the Sixth Amendment  
22 the Defendant is guaranteed the right to counsel to represent  
23 him throughout all of the judicial proceedings, including  
24 sentencing. What the Sixth Amendment does not guarantee the  
25 Defendant is the right to counsel of his choosing or choice if

1 he can't afford it or counsel that he gets along with at all  
2 times. From what -- what Mr. Rosario had to say, it seems that  
3 his issues are centered around two important topics. First,  
4 Mr. Dolz' alleged failure to approach the strategy of the trial  
5 in a way that he thought would have been best; and, then, also,  
6 if I understood correctly, Mr. Dolz' refusal to let the  
7 Defendant testify.

8           The first issue concerning the strategy of a trial, as  
9 your Honor well knows, is typically left to the province of the  
10 attorney. And as myself and Mr. Dolz and your Honor are aware,  
11 because we are lawyers, oftentimes what it seems to laymen's to  
12 be the best path to follow in a trial or hearing is not  
13 necessarily the best path to follow in light of trying to  
14 follow the law and present the evidence or rebut the  
15 Government's evidence, in Mr. Dolz' case, before the jury.

16           With regard to the audiotapes that Defendant mentioned  
17 repeatedly, as Mr. Rosario highlighted, and as the Court well  
18 knows, there was a ferocious battle concerning the playing of  
19 the audio portion of the videotapes. Mr. Dolz, as well as the  
20 other defense counsel filed motions before the Court,  
21 approached the Court at side-bars, had several oral arguments  
22 trying to get that audio portion played. Ultimately, your  
23 Honor decided not to require the Government to play that audio  
24 portion, but it was after Mr. Dolz tried to get that portion  
25 played.



1           THE COURT: What I think I -- If I recall what I  
2 ordered, was that if the Defendants -- if they wanted to bring  
3 those -- that audio in their case in chief, could do that.

4           MR. MEEKS: Yes, your Honor. Yes. And then that  
5 buttresses kind of the Defendant's complaints that at several  
6 points he passed notes to Mr. Dolz and things of that nature;  
7 again, that falls into that category of it's Mr. Dolz' job for  
8 the Defendant to present his case or rebut the Government's  
9 case against the Defendant in the best way -- in the best --  
10 zealously on behalf of the Defendant.

11           Now, Mr. Rosario's disagreement with Mr. Dolz'  
12 strategy decisions and things of that nature are fine, but they  
13 don't really equate to the necessity to replace Mr. Dolz at  
14 this point. Those issues -- everything that Mr. Rosario  
15 highlighted that happened at trial -- witnesses he believed  
16 that lied, evidence that should have been addressed or rebutted  
17 in a particular matter, this is not the time or forum for those  
18 issues to be addressed. If Mr. Rosario's request at this point  
19 is to have replacement or substitute counsel appointed for him  
20 at the sentencing stage, he has to put forth to the Court  
21 reasons for that. And the one question your Honor asked the  
22 Defendant clearly was: Of the documents you say Mr. Dolz has  
23 never given you and things of that nature, please list them for  
24 me. I have yet to hear the Defendant list a single document.  
25 As a matter of fact, he contends that he was never shown the

1 evidence, but then he goes in quite detail to reference things  
2 that he heard before trial started, the audio and things of  
3 that nature. So the Government doesn't --

4 THE COURT: Well, which -- which demonstrates to me  
5 that he had the -- he had the Rule 16 evidence before the  
6 trial.

7 MR. MEEKS: Yes, your Honor.

8 THE COURT: Except for the names of the cooperating  
9 witnesses, which, like I told Mr. Rosario, the Government  
10 doesn't have to announce them until really close to the trial  
11 for safety reasons. As a matter of fact, I think the  
12 Government provided those names when the Court said the names  
13 had to be provided.

14 MR. MEEKS: Yes, your Honor, that's correct. So, your  
15 Honor, in an abbreviated response to the Court's inquiry, the  
16 Government doesn't necessarily have a dog in the fight; however  
17 -- what we leave to the sound discretion of the Court whether  
18 it provides substitute counsel at this time -- I have not heard  
19 anything from the Defendant that would put forth a reason that  
20 the Court should do so.

21 THE COURT: Well, it seems to me from what I've heard,  
22 especially from Mr. Rosario, that the issues that he has  
23 brought up are issues that have, number one, been presented in  
24 the Motion for Acquittal or the Motion for New Trial; those  
25 issues as to sufficiency of the evidence have been -- have

1 already been presented in those motions by all the -- by all  
2 the Defendants. And assuming -- assuming -- because we're  
3 working on those motions now. Assuming that I deny them, they  
4 are issues that are properly presented before the appellate  
5 court. So what I'm going to do is I'm going to ask Mr. Dolz to  
6 remain as Mr. Rosario's counsel through sentencing; at which  
7 time, Mr. Rosario may request substitute counsel for his  
8 appeal, and I will name counsel for his appeal under the  
9 -- Well, I will -- I will ask the Circuit to name counsel for  
10 his appeal, under the civil -- Criminal Justice Act. I think  
11 -- I think that -- from what I've heard from Mr. Rosario, the  
12 issues that he brought up are more -- are issues that have been  
13 presented in the motions that are pending before the Court now,  
14 the Rule 29 Motion and the Rule 33 Motion, and they may be  
15 addressed once again, if the motions are denied, before the  
16 Court of Appeals.

17 Mr. Dolz, you want to say something?

18 MR. DOLZ-SANCHEZ: Yes, your Honor. Of course, I will  
19 not quarrel with the Court's Order.

20 Since we have -- The sentence is scheduled for  
21 August 16, I believe, so that leaves me little time. What I  
22 will do is I want -- I want to ask the Court to allow  
23 Mr. Rosario to file whatever motion --

24 THE COURT: Of course.

25 MR. DOLZ-SANCHEZ: -- he deems that he needs to file.

1 Even if I don't agree with it. If I see it -- if I see some  
2 reason to that, I'll adopt them. But please allow him to file  
3 whatever document he needs to file. If he wants to challenge  
4 the Presentence Investigation Report, he can file his  
5 objections. I'll be filing my objections. I just want to  
6 -- your Honor to allow him to file whatever he deems that he  
7 needs to file.

8 THE COURT: All right. I will allow that.

9 Yes, Mr. Rosario, please.

10 THE DEFENDANT: I have two questions. I believe I  
11 heard Mr. Dolz mention that I didn't want -- that I didn't want  
12 them to know that I was a policeman.

13 THE COURT: No, I don't think he said that. I don't  
14 think he said that.

15 MR. DOLZ-SANCHEZ: The other way around.

16 THE COURT: It's the other way around.

17 As a matter of fact, Mr. Rosario, when the jury got  
18 the Indictment, that part of the Indictment that mentioned that  
19 you were a policeman was redacted, was taken out, because  
20 everybody thought that that would be to your benefit that the  
21 jury not know that you had been a policeman before.

22 THE DEFENDANT: But was that decision made to protect  
23 my rights?

24 THE COURT: Everybody thought that if the jury heard  
25 that you had been a policeman, it would have been worse for

1 you.

2 THE DEFENDANT: That it would be inflammatory, and it  
3 would be worse?

4 THE COURT: I don't know if it would be inflammatory,  
5 but it would -- it would tend to -- The jury would tend to say,  
6 "Here's another corrupt policeman," and that may not have been  
7 to your benefit. You know what I mean?

8 THE DEFENDANT: Yes. But I ask --

9 And this is one of the things I want to put in the  
10 motions. Even the attorney may not want.

11 -- who protected my rights before the Grand Jury?

12 THE COURT: Well, you got to remember, Mr. Rosario,  
13 the Grand Jury is -- only the Government presents evidence.  
14 And the other -- the defense attorneys cannot go -- be in there  
15 and ask questions. The only thing that the Government -- that  
16 an attorney may do is sit outside -- an attorney for a witness,  
17 sit outside and counsel that witness, but the attorney cannot  
18 go into the Grand Jury.

19 THE DEFENDANT: I know that, but -- but with what  
20 intention did the Government bring that information to the  
21 Grand Jury in an Indictment?

22 THE COURT: The purpose of an Indictment is to  
23 show that there's probable cause that a person committed a  
24 crime -- that a crime was committed and that a particular  
25 person committed it. And the way the Grand Jury works, they

1 only hear the Government's side of the story. That's why I  
2 don't -- I don't know if you recall when I was instructing the  
3 jury, I said precisely that: The Indictment doesn't prove  
4 anything. The Indictment only is the way to bring charges  
5 against a person. You cannot use the Indictment -- the  
6 Indictment to find someone guilty or not. It proves nothing.

7 And then in that Indictment, what we decided --

8 THE DEFENDANT: Here's my insistence. What was  
9 the intent -- their intention if they included that in the  
10 Indictment that I was a police officer if it didn't have a  
11 relationship with the Indictment itself?

12 THE COURT: Well -- I don't know what the Government  
13 was thinking, but perhaps just -- they just wanted to identify  
14 you as much as possible. But the important thing is -- the  
15 important thing is not that the -- not that the Indictment  
16 found probable cause, because, from reading the Indictment,  
17 whether or not it had indicated that you had been a policeman,  
18 the -- the Grand Jury would probably have found probable cause  
19 against you. The important thing is that the jury that decided  
20 the case did not know that you were a policeman. And that was  
21 something that was brought up by Mr. Dolz and that the other  
22 -- the other attorneys and Defendants agreed to. It could have  
23 affected them also. I don't know.

24 THE DEFENDANT: Well, halfway through the trial, we  
25 heard that Joe Slesar, the DEA agent, had testified before the

1 Grand Jury and the U.S. Attorney had not informed the defense  
2 of that, that the -- the agent had testified.

3 THE COURT: Well, you have to remember, the defense  
4 had the Grand Jury transcripts.

5 Did they, Mr. Meeks?

6 THE DEFENDANT: But not -- not that of Agent Slesar.

7 MR. DOLZ-SANCHEZ: Mr. Slesar was never a witness in  
8 this trial. He had gone to the Grand Jury and taken the stand,  
9 but the Government elected not to present him. We tried to  
10 bring him in and --

11 THE COURT: I remember that.

12 MR. DOLZ-SANCHEZ: -- telling he wouldn't testify, so  
13 we were not entitled to that transcript. And as of now, we are  
14 not entitled to that transcript. That's the legal position.

15 THE COURT: So -- but what Mr. Dolz has indicated,  
16 Mr. Rosario, is that -- Well, you heard me say that I will not  
17 allow Mr. Dolz to withdraw from your representation for the  
18 sentencing, however, I think Mr. Dolz is correct in his request  
19 to the Court to allow you to file whatever motions you need to  
20 file before sentencing to include whatever comments or  
21 objections you may have to the Presentence Report prepared by  
22 Ms. Valentin. Mr. Dolz will do his own objections to the  
23 Presentence Report, but -- and this usually -- usually this  
24 doesn't happen, but in the situation of this case, I'm going to  
25 allow you personally to file whatever motions you need to file

1 before the date of sentencing, which I believe is August --

2 What? 16?

3 MR. DOLZ-SANCHEZ: I think it's the 16th?

4 THE DEFENDANT: (Spanish.)

5 THE COURT: Well, now you have it. It wasn't filed  
6 that long ago.

7 THE DEFENDANT: Okay.

8 THE COURT: What's the date of the filing? Up top.

9 MR. DOLZ-SANCHEZ: July 1st.

10 THE DEFENDANT: I think that the most, it's 35 days  
11 before, it should be discussed with me.

12 THE COURT: Thirty-five days from the date it was  
13 provided, not the date it was filed. Because it -- what the  
14 probation officer does is provide the report, gets comments,  
15 and then files it. But we have -- we have -- we have about 30  
16 days before --

17 MR. DOLZ-SANCHEZ: It will be a matter of postponing  
18 the sentence for five or ten days. That's the motion.

19 THE COURT: I don't think that would be necessary. I  
20 think you will have enough time to take a look at it and file  
21 whatever motions you need, not only as to the Presentence  
22 Report, but whatever motions you may want to file concerning  
23 your case.

24 Remember, I'm making an exception here.

25 THE DEFENDANT: And I really appreciate that.



1           And the main problem that I have is that I haven't  
2   been given the trial transcripts. And we've insisted on asking  
3   for those transcripts. Attorney Dolz hasn't given me those  
4   transcripts. There's some important Grand Jury testimony that  
5   I need, like Jesus Robles' testimony, and also the bond hearing  
6   in which Agent Cruz Marrero testified. I've asked for the  
7   information all the time, and I am not given the information  
8   ever. I want to ask for you to please have that information be  
9   given to me.

10           MR. DOLZ-SANCHEZ: Your Honor, I will provide whatever  
11   information I deem -- I deem -- necessary, because as far as I  
12   know, the chemists are -- the testimony of the chemists, which  
13   basically determined the amount of drugs, the testimonies of  
14   the Defendants that are alluded to in the report, I will  
15   provide it. I will not provide the full transcript of the  
16   trial, because I don't think -- I don't see the necessity at  
17   this time. I will provide whatever -- whatever is needed for  
18   him to make the objections to the PSI. But this is a 44-day  
19   trial and there are thousands of pages and I don't think we  
20   could -- going to get anywhere with that.

21           THE COURT: Well, let's do this, we will start with  
22   that. If --

23           Mr. Rosario, if you really -- once you see these parts  
24   of the transcript that go towards any objections that you may  
25   have to the Presentence Report, if you need anymore --

1           You know, you can file whatever motion you -- you deem  
2   necessary, and I will consider it.

3           THE DEFENDANT: In reality, I don't know much about  
4   the Presentence Report. Right now I don't know what it says.  
5   But I'm not going to emphasize that report so much. There are  
6   some important things in the transcripts that are important to  
7   me because the motion is practically completed. All I need to  
8   do is add the page, the line number, and the date, so that it's  
9   easier to follow, but the -- it's practically prepared, more or  
10  less.

11          THE COURT: Well, let me ask you this, are you -- are  
12  you making reference to the testimony of any particular person?

13          THE DEFENDANT: Yes.

14          THE COURT: Well, then, you know, I have a copy of the  
15  transcript also, and I'll be able to find --

16          THE DEFENDANT: But as the attorney said, there were  
17  40-something days of trial, and I know --

18          THE COURT: No, I understand --

19          THE DEFENDANT: I know what happened, but if I don't  
20  have the transcript, I can't tell your Honor on what page and  
21  what line this is -- this is at.

22          THE COURT: But you can say that it was the testimony  
23  of --

24          Say, for example, Jesus Robles, and I will look  
25  through the -- through the testimony of Jesus Robles to find

1     whatever it is.

2                 MR. DOLZ-SANCHEZ: Your Honor, even -- when I get my  
3     copy, of whatever is it that he files, I'll go through the  
4     transcript, if I have to supplement it, I'll do it. I just  
5     want the Defendant to bear in mind that what is important now  
6     is the Presentence Report. That's what's before the Court now.

7                 THE COURT: The only thing --

8                 You know, Mr. Rosario, Mr. Dolz is correct in that.  
9     The thing that is now before the Court is the --

10                MR. DOLZ-SANCHEZ: Presentence Report.

11                THE COURT: -- the Presentence Report. There are  
12     motions pending for acquittal already by all the Defendants  
13     that we have to decide before the sentencing. But this -- this  
14     exercise that you're going through will probably assist you and  
15     whatever counsel is appointed to you for appeal purposes.  
16     Because right now at sentencing I'm not going to get involved  
17     in -- as to who -- who told the truth and who didn't tell the  
18     truth. The jury already decided that. And that's an issue  
19     that I'm going to decide based on the motions for acquittal  
20     that were filed and that may be an issue that will be presented  
21     before the Circuit by whatever attorney will represent you.

22                MR. DOLZ-SANCHEZ: I'll supplement whatever I can. As  
23     soon as I have the -- his document, I'll supplement it as best  
24     as I can.

25                THE DEFENDANT: Without being disrespectful, I've been

1 waiting for him for three months to discuss the case.

2 THE COURT: Yeah, but the only thing that is -- the  
3 only thing that is proper to discuss now is the Presentence  
4 Report. You didn't even allow him to be there with you.

5 MR. DOLZ-SANCHEZ: And I was there, your Honor. I was  
6 there at nine o'clock in the morning.

7 THE COURT: That would -- I don't think if you  
8 remember when I said -- You know, when I set a sentencing date,  
9 I always say it's very important that you go to this interview  
10 and that your attorney be there to assist you. Because things  
11 that may not be -- may not seem important to you at the time,  
12 the attorney may -- may -- may say that, you know, it's  
13 something that has to be brought to the attention of the  
14 probation officer. But you didn't allow Mr. Dolz to be there,  
15 and I think that -- that was a bad decision on your part,  
16 really.

17 THE DEFENDANT: Can I tell you why I didn't allow him  
18 to be there?

19 THE COURT: Yes, please.

20 (Respite.)

21 (No response by the Defendant.)

22 THE COURT: All right. Okay. Well, I will expect a  
23 motion from you objecting to the -- or stating whatever you  
24 want to state about the -- about the -- about the Presentence  
25 Report. All right?

1           THE DEFENDANT: With all due respect to this Court and  
2 everyone, I'm going to accept whatever sentence you deem I  
3 should have. I have no problem with all the life terms you  
4 want to give me.

5           THE COURT: I don't know what sentence I'm going to  
6 impose on you.

7           THE DEFENDANT: What I want to do is to appeal at my  
8 time --

9           THE COURT: That's your right.

10          THE DEFENDANT: -- because what I want is to present  
11 the motions so that everything is on the record, things that  
12 didn't come up in trial, with all the witnesses, with all the  
13 things that the witnesses said and all the evidence presented,  
14 even -- I would have even deemed myself guilty if I had been a  
15 juror. But my defense did not present the things --

16          What I want to do is present my motion with all the  
17 pages and everything numbered. And if there's a cost to it to  
18 get those transcripts, my mother is here, we will try to do  
19 everything that we can do to find the money.

20          THE COURT: That won't be necessary. But right now  
21 you should concentrate on the Presentence Report. That's the  
22 important thing right now; your sentence.

23          THE DEFENDANT: Well, if I don't present the motion  
24 before you, hammer me, then the truth will never come out.

25          THE COURT: Well, you know, I'm -- I'm working right

1 now on the motions for acquittal that were filed and the  
2 motions for a new trial. And, you know, it was a long trial,  
3 and we've been working on this for a while.

4 MR. DOLZ-SANCHEZ: We will present whatever he needs  
5 to present in a sort of Defendant's version --

6 THE COURT: Of course.

7 MR. DOLZ-SANCHEZ: -- attached to the Presentence  
8 Report.

9 THE COURT: Of course.

10 There's -- You know, Mr. Rosario, I just want to  
11 make sure you understand that the important thing now is the  
12 Presentence Report. Whatever -- whatever other type of motion  
13 concerning the evidence is more of an issue now for the -- for  
14 the Court of Appeals, really.

15 THE DEFENDANT: The thing is, I wouldn't appeal the  
16 sentence. What I would appeal -- I need a document. I've been  
17 waiting for the transcripts for three months. I'm just asking  
18 for you to allow me to prepare myself as -- so that you can  
19 receive something well prepared as you deserve -- as this Court  
20 deserves. I ask you to please have that forwarded to me, not  
21 one week before the sentence.

22 THE COURT: Well, Mr. Dolz has already said that he  
23 will provide you those parts of the transcript that have to do  
24 with the Presentence Report. And I -- You know, I have to tell  
25 you, Mr. Rosario, again and again, you should concentrate on

1 the Presentence Report. The other issues as to the evidentiary  
2 matters that happened in court, who told the truth, who didn't  
3 tell the truth, that's more of an issue for the Court of  
4 Appeals. All right?

5 THE DEFENDANT: What if I show you the document?

6 THE COURT: What document?

7 THE DEFENDANT: The motion that I was working on. I'm  
8 just missing. . .

9 THE COURT: Once -- You know, finish what you can, and  
10 file it. I will consider it.

11 THE DEFENDANT: I don't want to cite words that seem  
12 favorable to me, because I don't want to do what the Government  
13 did with me. I don't want to -- it to be biased in my favor.  
14 I want to cite things just as they happened in reality. That's  
15 my only concern.

16 THE COURT: Like I told you, I will take a look at  
17 the transcript myself and make sure that what is said in the  
18 transcript is what is used to be -- to -- for my decision. All  
19 right?

20 THE DEFENDANT: It might be a little longer, so that  
21 you can find it easier.

22 THE COURT: However you want to prepare it.

23 THE DEFENDANT: Thank you, Honorable Judge, and I  
24 apologize for the time I've taken.

25 THE COURT: No. No apologies necessary. Thank you

1 very much.

2 COURT SECURITY OFFICER: All rise.

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6 (The hearing of this cause concluded at 11:24 a.m., on  
7 July 19, 2010.)

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# REPORTER'S CERTIFICATE

UNITED STATES DISTRICT COURT )  
 ) ss.  
OF PUERTO RICO )

I, **ROLAYNE M. VOLPE**, Certified Court Reporter, CCR, and Registered Professional Reporter, RPR, do hereby certify that the transcript of the foregoing proceedings accurately reflects the events that occurred before me to the best of my ability at the time and place set out on the caption hereto, the witnesses having been duly cautioned and sworn, or affirmed, to tell the truth, the whole truth, and nothing but the truth.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken or to any attorney or counsel employed by the parties hereto, nor financially interested, directly or indirectly, in the outcome of this action.

CERTIFIED AND SIGNED on this 23rd day of January, 2011.

S/:

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*Rolayne M. Volpe*  
ROLAYNE M. VOLPE, CCR, RPR  
Certified Court Reporter and  
Registered Professional Reporter

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